

Jersey fits more miners' base needs

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When looking at inward and outbound investment relating to Africa, as in any other part of the world, businesses have to look to the most effective and efficient structuring methods. The offshore world already plays a significant role in a number of African investments whether for reasons of advantageous tax treatment or to utilise the flexibility afforded by offshore jurisdictions.

The British Virgin Islands (BVI) and Jersey have already featured prominently in investment structuring and capital raising and Jersey's government in particular has embraced the opportunities presented by the continent.

Economic and political stability, a feature which nowadays isn't that common throughout some other Europe-based tax structuring jurisdictions, provides a significant advantage for Jersey and the BVI.

Tax neutrality is clearly important and both Jersey and the BVI have a proven record of providing tax efficient solutions and innovation. As the Eurozone continues to be troubled, looking to jurisdictions that offer financial and political stability is essential and it would be unwise to compound any investor uncertainty around Africa by utilising a structuring jurisdiction which has its own inherent difficulties.

Offshore companies are used in a wide range of structured finance, capital markets, banking, property and other financing transactions. Using a BVI or Jersey company for structuring international transactions can also be beneficial in terms of company law provisions around ease of transfer of ownership and distributions to shareholders.

Additionally, shares can be denominated in any currency and issued in various classes, including redeemable shares. The use of no par value companies adds yet more flexibility. These features enable BVI and Jersey-based companies to be structured to meet a wide variety of business purposes, from trading vehicles to investment vehicles and joint ventures.

Joint venture activity in the African continent has risen significantly over the past few years as a cost-effective way of structuring transactions between parties with complementary aims and objectives who seek to pool together their various resources.

Tony Blair touched on this during his keynote speech at the Mining Indaba in Cape Town last year. For many mining companies pooling resources in the development of infrastructure surrounding mines could be an attractive prospect. Of course this relies on the proximity of mines.

Vehicles domiciled in the BVI and Jersey are easily established and relatively low cost to maintain, which can also be an attractive feature for parties looking to establish a joint venture. The fact that these companies are suitable from cradle to grave, or from inception of an idea to perhaps the flotation of the company, means that efficient structuring can be put in place at the outset and ideally before the entity in question has developed value which could cause difficulties – such as the crystallisation of gains causing tax triggers – at a later date.

As a leading international finance centre, Jersey is the jurisdiction of incorporation for many major companies listed on stock exchanges throughout the world, including the main board of the London Stock Exchange and AIM. For example, many Chinese, Russian and other international businesses looking to access the European investor market have incorporated parent companies in Jersey as part of their listing on one of the UK markets.

Additionally, in recent years several FTSE 100 and 250 companies have adopted Jersey holding company structures. Jersey is now one of the most popular jurisdictions of incorporation for companies listing in London behind the UK.

There has also been a marked increase in the use of Jersey holding companies for groups listing on US stock markets, including the NYSE and NASDAQ. BVI companies also fulfil a significant role in the equity capital markets space and were, in more positive times, used by junior mining companies looking to list on AIM.

Re-domiciling is another area where there has been some activity and where there could be further opportunity in some parts of the world. It is now becoming increasingly important to demonstrate proper substance in a jurisdiction where the management of a company occurs.

Where offshore structures have been used, there have been a number of businesses which have chosen to move premises and senior management to Jersey. In the mining sector, this includes companies such as Randgold Resources, Centamin, Bellzone Mining, Lydian International and AmLib.

Of these companies, the transaction which brought Centamin to Jersey was perhaps the most interesting. In essence the deal was a corporate re-domiciliation via an Australian scheme of

arrangement. The process involved not only the court-approved process, but also a clear analysis of the differences between Australian and Jersey law and their relative impact on shareholders. Ultimately shareholders were happy to swap their holdings in the Australian vehicle for new holdings in the Jersey entity.

As various African countries, investors and business owners become more sophisticated and capital raising or investment opportunities increase, there will undoubtedly be further opportunities for offshore structuring and both Jersey and the BVI are well placed to assist clients with these opportunities.

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Meet the Author



[Simon Dinning](#)

Partner

[Jersey](#)

[London](#)

E: simon.dinning@ogier.com

T: [+44 1534 514251](tel:+441534514251)

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